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COMMISSIONER

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June 19, 2019

Krishna P. Singh
President and CEO
Holtec International
Krishna P. Singh Technology Campus
1 Holtec Blvd.
Camden, NJ 08104

Dear Dr. Singh:

I write regarding Holtec International's stated plans to build and operate a nuclear waste storage facility in western Lea County, New Mexico, near the Eddy County line. In the course of applying for a 40-year permit from the United States Nuclear Regulatory Commission (NRC) to deposit in New Mexico up to 120,000 metric tons of highly radioactive waste from nuclear facilities across the United States, Holtec has stated that its proposal enjoys "overwhelming support" in the state. In fact, a number of New Mexico industry associations, from the New Mexico Cattle Growers' Association to the Permian Basin Petroleum Association, recently have expressed serious concerns about – and in some instances outright opposition to – Holtec's proposal. Along with elected officials and non-profit organizations, they have raised significant questions about the effect of the proposed nuclear waste storage site on New Mexico's oil and gas industry, farm and ranch economy, and environment. This letter will not restate those concerns, which are a matter of public record.

Instead, as New Mexico's Commissioner of Public Lands, with direct oversight of mineral leasing at the location of Holtec's planned facility, I write to express my safety concerns and to address several misrepresentations that Holtec has made to the NRC and New Mexicans about its control of the proposed disposal site as well as agreements that it claims to have secured from New Mexico State Land Office mineral lessees. The State Land Office has reviewed a number of Holtec's submissions to the NRC, including the company's Facility Environmental Report (FER) and Safety Analysis Report (SAR). Those

submissions contain statements that have the potential, intended or not, to mislead federal regulators and the public alike, and require immediate correction.

The site for Holtec's proposed nuclear waste facility (the Site) is located in Section 13, Township 20 South, Range 32 East, and portions of Section 17 and 18, Township 20 South, Range 33 East, between the cities of Hobbs and Carlsbad. Holtec has repeatedly and publicly characterized the Site as under its control. *See, e.g.*, FER 2.2.1. In fact, the subject land is a split estate; while Eddy-Lea Energy Alliance, LLC privately owns the surface estate, the State of New Mexico, through the New Mexico State Land Office, owns the mineral estate. The State Land Office's control of the Site's mineral estate is not disclosed in the FER or other NRC submissions. To the contrary, in its filings with the NRC, Holtec appears to have entirely disregarded the State Land Office's authority over the Site's mineral estate. Holtec sent notice of its initial license application in March 2017 to over 60 elected and appointed government officials, but failed to include the State Land Office. The company's subsequent filings continue to ignore the State Land Office's legal interest in the Site. For example, Table 1.4.1 of the FER lists all applicable regulatory requirements, permits and required consultations – but conspicuously omits any reference to the State Land Office.

As you know, the Site is located within the Permian Basin, one of the world's most productive oil and gas-producing regions, and there is significant oil and gas development (as well as potash mining) in the Site's immediate vicinity. Holtec claims throughout its NRC submissions that it has secured the agreements of mineral lessees on or near the Site to forebear from certain development activities. For instance, Section 2.4.2 of the FER states that “[b]y agreement with the applicable third parties, the oil drilling and phosphate extraction activities have been proscribed at and around the site and would not affect the activities at the site.” Along similar lines, Section 2.6.4 of the SAR notes: “With regard to potential future drilling on the Site, Holtec has an agreement [2.6.9] with Intrepid Mining LLC (Intrepid) such that Holtec controls the mineral rights on the Site and Intrepid will not conduct any potash mining on the Site. Additionally, any future oil drilling or fracking beneath the Site would occur at greater than 5,000 feet depth, which ensures there would be no subsidence concerns [2.1.8].”

Holtec's claim that it has secured third-party agreements for control of the Site is incomplete at best. Site control generally refers to ownership of, or a leasehold interest in, a right to develop a particular tract of land. Holtec does not “control” the “mineral rights on the Site.” Instead, Holtec only has an agreement with a single company, Intrepid, relating to that company's potash mining – an agreement that has yet to be approved by the State Land Office, under whose authorization Intrepid conducts its mining activities on the Site. The State Land Office's oil and gas lessees, meanwhile, confirm they have not entered into agreements with Holtec to suspend or limit their oil and gas development to accommodate Holtec's planned nuclear waste disposal facility. In addition, there are other mineral resources potentially present on the Site that may fall within the State Land Office's mineral estate that are not addressed in Holtec's filings at all.

In addition to misstating its control over the Site, Holtec also treats as a foregone conclusion the State Land Office's ability and desire to restrict oil and gas drilling on the Site. Holtec, through the Eddy-

Lea Energy Alliance, has proposed that the State Land Office impose a negative easement called a “land use restriction or condition” on all mineral development on the Site, including a ban on oil and gas development between the surface and a depth of 3,000 feet, and a prohibition on any directional or horizontal wells bottomed beneath the site that Holtec believes might “disturb or conflict” with its use of the site. The State Land Office has not approved any such restriction, which would likely trigger legal challenges from businesses that already are conducting operations on the Site pursuant to their existing mineral leases.

The State Land Office’s oil and gas leases on and adjacent to the Site do not impose any depth restrictions on drilling activities. Contrary to Holtec’s assurances that “any future oil drilling or fracking ... would occur at greater than 5,000 feet depth,” the State Land Office’s analysis demonstrates the existence of numerous active oil and gas wells within a three-mile radius of the Site at depths of 5,000 feet or less.

In addition, two of the State Land Office lessees on or immediately adjacent to the Site, COG Operating, LLC and EOG Resources, Inc., raise significant concerns about the proposed project and the land use restriction that Holtec requires, particularly its implications for salt water disposal wells, pipelines, and horizontal wells underneath the Site that Holtec might determine – using unknown criteria – will “disturb or conflict” with its nuclear waste storage operations. Both companies advise that they will explore all legal options if the State Land Office were to impose a restriction on oil and gas activities that are permitted under their current leases, along the lines of what Holtec seeks. For those reasons, it is difficult to take at face value Holtec’s representation in its May 23, 2019 letter to the State Land Office that “Oil and Gas is not affected by the facility.”

The International Atomic Energy Agency appears to share the State Land Office’s and its lessees’ concerns about the unknown interaction between nuclear waste storage and preexisting oil and gas development on the very same tract of land. In a 2007 publication, it explains that “[a]ny potential site will require an adequately controlled single-use land area to accommodate storage facilities,” and that potential waste disposal sites should “avoid land with exploitable mineral and energy resources.” International Atomic Energy Agency, Selection of Away-From-Reactor Facilities for Spent Fuel Storage: A Guidebook, IAEA-TECDOC-1558 (Sept. 2007) at 3.2.2 (pp. 23-24) (emphases added). Despite Holtec’s assurances to the NRC and to New Mexicans, it does not appear that your company has undertaken a thorough and critical analysis of the possible conflicts between your nuclear waste storage proposal and the vital economic activities that are already taking place on the Site.

Finally, while I appreciate Holtec’s attendance at a February 19, 2019 meeting at the State Land Office to overview the company’s plans, a number of serious questions that I and my staff raised at that meeting remain unanswered. Holtec to date has not responded to our inquiry about the effects that its proposed operations will have on oil and gas lessees’ present or future fracking activities. In addition, we asked Holtec to identify the worst case scenario for an accident or other adverse event at the Site, and explain how the company would respond to such a contingency. To date, we have not received any

meaningful response to this inquiry, an omission that requires the State Land Office to assume that Holtec has not sufficiently analyzed the risks posed by its planned operations or is unwilling to do so.

If Holtec's proposal moves forward, nuclear waste likely would remain in southeastern New Mexico until 2048 at the earliest, and possibly much longer since there is no designated permanent repository anywhere in the nation for high-level radioactive waste. As the Commissioner of Public Lands, I am deeply concerned about the misrepresentations Holtec made to the NRC about purported agreements and restrictions regarding mineral leasing at the Site that do not exist and may very well never ever exist. Understanding the extent of oil and gas operations and other mining activities that may be conducted at the Site is essential to accurately assessing the risks of Holtec's planned nuclear storage operations. Holtec's NRC filings are materially inaccurate in this regard. Given these safety concerns, and lack of consideration for the State Land Office's fiduciary responsibilities, I do not believe that Holtec's proposed nuclear storage project is in the best interests of the State Land Office, its lessees, and its beneficiaries.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Stephanie', with a long horizontal flourish extending to the right.

Stephanie Garcia Richard
Commissioner of Public Lands

cc: Hon. Rick Perry
Secretary, United States Department of Energy

Hon. Kristine Svinicki
Chair, United States Nuclear Regulatory Commission

Hon. Michelle Lujan Grisham
Governor of the State of New Mexico